

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : **YOSHIMURA, Takashi**

Group Art Unit Unknown

App. No. : **10/523,120**Filing Date : **January 24, 2005**For : **Station**Examiner : **Unknown**

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)
STATEMENT IN SUPPORT OF PETITION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The prosecution history of this application is short, but complicated. This is the second time the application has been declared abandoned in less than a year.

The application is an U.S. National Stage under 35 USC 371 submission from a Japanese PCT application. The application was filed by EXPRESS MAIL (this fact becomes important later in the discussion) and payment was authorized by a Credit Card Information sheet. The transmittal letter accompanying the application contained a calculation of the USPTO filing fees and included the standard statement for authorization to pay any additional fees.

"The Commissioner is hereby authorized to charge any additional fees which may be required, now or in the future, or credit any overpayment to my credit card."

A few days after mailing the application, I received the Return Postcard with the filing date and application number. In due course, the application was available in Private Pair. The Application Data showed "Fees Paid".

In early June 2005, while checking my applications in Private Pair, I noticed that the status of the application had been changed to “Abandoned”. I contacted USPTO Customer Service and was told that the fees may have not been paid, even though Private Pair listed the fees paid. The person could not understand why the fees were not paid because the application contained the standard authorization statement. I was told to FAX a letter to the appropriate office at the USPTO and supply a new Credit Card Information Sheet for payment of the Filing Fee. Again, I included the standard authorization statement.

Upon checking my Credit Card statement by phone, the Filing Fee for this application was charged to my account on June 24, 2005. I thought everything had been solved.

Near the end of July 2005, I received a document from the USPTO stating that my FAX letter had been considered a Petition to Revive, the Petition had been granted, and the application was no longer abandoned. I read the document but the language was very confusing. All I knew was that the filing fee had been paid and the application was no longer abandoned. The status remained listed as abandoned; however, I considered it just an oversight by the USPTO and the status would be up-dated. I began the long wait for the application to reach the stage for examination.

Recently, I noticed that the application’s location was listed as “FILE REPOSITORY (FRANCONIA)” rather than “ELECTRONIC”. I again contacted the USPTO Customer Service and they retrieved the application from the repository. I was informed that the application had been Abandoned for failure to pay the Filing Fee.

The document I received in July, upon careful reading and examining several passages in the MPEP, stated that the Filing Fee had been paid, but the USPTO had returned the money to my credit card account because “payment was made by FAX”, and I was suppose to re-pay the filing fees. When the filing fees had not been re-paid by September, the application was abandoned again.

There are two important issues concerning my attempts to pay the Filing Fee.

1. The original application package contained a Transmittal Letter with the standard statement giving Authorization to the USPTO to charge any extra fees to my Credit Card and the USPTO form – Credit Card Information Sheet. If there were any problems with payment of the filing fee, the USPTO had the proper information to charge my account the correct amount. This

fact is evident from the many occasions the USPTO has either charged extra fees or refunded excess payments, as is desired by the authorization. The USPTO was authorized to pay the Filing Fee at any time during the entire period of the application pendency.

Therefore, the USPTO should have automatically charged my Credit Card account upon deciding for the first time that the fees had not been properly paid. Additionally, when the Filing Fee was paid in June, the application was complete with all fees paid. It was only the actions by the USPTO that caused the application to be considered abandoned.

2. The application was filed by EXPRESS MAIL and the Credit Card Information Sheet was enclosed in the application package. The USPTO should not have refunded the Filing Fee, after it had been properly charged to my credit card account, then to require me to re-pay the Filing Fee by having the USPTO charge the same credit card account.

The conclusion that I had paid the filing fee by "FAX" was erroneous. The FAX in June 2005 contained the Credit Card Information and my signature, so the USPTO department that processes the fee had the correct information in case the previous Credit Card Information Sheet had been discarded. I was just furnishing information that had already been sent to the USPTO by mail.

Conclusion

Included with this petition is payment of the Filing Fee for this application. Additionally, I have paid the Petition Fee of \$1,500; however, I believe the petition fee should be refunded since it was the actions of the USPTO personnel to ignore the Payment Authorization Statement in the Transmittal Letter that caused the Filing Fees not to be paid. The Filing Fee should have been paid in January 2005 and, after the fee had been paid in June, should have remained paid rather than refunding the fee just to have me pay it again.

It is understandable that errors can occur during the processing of an application. However, I should not be held responsible to pay a high Petition fee to reverse actions not under my control.

The application was never meant to be abandoned and, the entire time from the filing of the application to the present, the abandonment was unintentional.

All fees are believed paid by the electronic payment system; however, the Commissioner is hereby authorized to charge any additional fees which may be required, now or in the future, or credit any overpayment to my credit card.

Date: May 3, 2006

/KOH/
Kirk Hahn
Agent of Record
Registration No. 51,763
Customer Number 038051
714-544-2934